

AMEER AGENCY (SUING AS A FIRM) & ANOR.

a

v.

SOUTH EAST ASIA INSURANCE (B) (SDN) (BHD)

HIGH COURT, BRUNEI
DATO' SIR DENYS ROBERTS CJ
[CIVIL SUIT NO. 58 OF 1992]
14 OCTOBER 1993.

b

CONTRACT: Policy of fire insurance - Whether claim by insured fraudulent - Whether claim by insured exaggerated - Whether exaggeration amounts to fraudulent claim.

CONTRACT: Policy of fire insurance - Breach of condition in policy - Whether insured failed to produce document and other information required by insurer.

c

CONTRACT: Policy of fire insurance - Whether insured guilty of non-disclosure of material facts - Allegations of failure to disclose another policy in force for the stock of insured's other business on the same premises.

The plaintiff took out a policy of insurance with the defendant, insuring the plaintiffs' stock in trade of textile goods and business fixtures and fittings against loss and damage by fire at the plaintiffs' business premises for the period 30 April 1990 to 30 April 1992. On 16 April 1991 a fire destroyed the plaintiffs' business premises, causing loss and damage to the plaintiffs. The second plaintiff notified the defendant of the loss and damage and on 27 April 1991 delivered a claim in writing to the defendant setting out various particulars of loss and damage. After 11 months, the defendant repudiated their liability under the policy and the plaintiffs sued for payments under the policy. The defendant claimed, *inter alia*, that the claim was fraudulent, that the plaintiffs were in breach of the insurance contract i.e. failed to produce documents and other information required and that the plaintiffs failed to disclose material facts i.e. that another policy was in force for the stock of the second plaintiff's other business on the same premises.

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Held:

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[1] From the evidence adduced, the plaintiffs' claim was seriously exaggerated. But it may amount to a fraudulent claim only if it was so far from the truth and not merely inflated partly as a result of unreliability of a communal memory. An exaggerated claim will be considered fraudulent only if it is clear that the assured intended to defraud the insurers or the over-estimate is so serious that it may be inferred that the assured must have intended to defraud them. On the facts, the insurers have not discharged their burden of showing that the claim was fraudulent.

g

[2] The defendants had the documents by 20 June 1991 and had informed the plaintiffs that all that was necessary for the claim to be processed had been furnished. Therefore there had been substantial compliance with plaintiffs' duty to furnish documents required, bearing in mind the circumstances of the fire.

h

[3] The requirement of utmost good faith applies to both parties and all classes of insurance. Insurers must prove that the non-disclosure was material, within the knowledge of the insured and not communicated to the insurers. On the evidence, the plaintiff had informed the defendant of the policy with another insurer over the goods of another business on the upper floor.

[The plaintiff is awarded B\$234,000 with cost]

i

a Cases referred to:

Tai Lee Finance v. Official Assignee and Others [1983] 1 MLJ 81 (foll)

Dawson's Ltd v. Bonnin & Others [1922] 2 AC 413 (HL) (refd)

For the plaintiffs - Dr. Ronnie Lee (Ang Poi Chi with him); M/s. Ahmad Isa Lee & Lind

For the defendants - TC Chan (Andrew Ong with him); M/s. Choo Chan & Wong

b**JUDGMENT****Denys Roberts CJ:***Background*

The first plaintiff (P1) is a firm registered in Brunei. The second plaintiff Mr Jasbir Singh ("Singh") was at all material times a partner in P1.

c

The plaintiffs took out a policy of insurance with the defendant. In consideration of the premium paid by the plaintiffs, the defendant insured them against loss or damage by fire, during the period 30 April 1990 to 30 April 1992.

The insurance was said to be for B\$500,000 "for stock in trade of textile goods" and B\$40,000 for business fixtures and fittings, all at the plaintiffs' business premises at No. 33, Jalan Pretty, Kuala Belait.

d

On 16 April 1991, a fire destroyed the premises at No. 33, Jalan Pretty, and other premises adjoining it, causing loss and damage to the plaintiffs.

Singh notified the defendant of the loss and damage shortly after the fire. On 27 April 1991, he delivered a claim in writing to the defendant setting out the various particulars of the loss and damage. The plaintiffs have not received any sum from the defendant.

e

The latter has raised, by four defences entered at various times, on 4 June 1992, 16 September 1992, 29 June 1993 and 28 September 1993, a number of defences, each of which requires to be examined.

f

(a) That the claim made by the plaintiffs was fraudulent in that the list of goods which the plaintiffs say was lost in the fire was false and untrue.

(b) Breach of contract in that, by virtue of condition 11 of the insurance policy, whereby the plaintiffs, in the event of a fire causing loss or damage, failed to produce documents and other information as the defendant may require.

g

(c) Non-disclosure of material facts. In particular, it is alleged that the plaintiffs failed to disclose that there was another policy in force for the stock of P2's other business Singh Enterprises ("SE") on the same premises.

(d) That the policy covered only textiles, and not such other goods as might be present in the premises at the time of the fire.

*PW1 Puspaanan Thuraishwamy***h**

He gave little evidence of value. All he could say was that he was a regular customer of P1's shop at Kuala Belait. He went 10-15 times during the three months before the fire, the last time a couple of days before it. Whenever he went, the shop was packed with T-shirts, garments, shoes and other goods. He looked at the photos at pages 242 to 249 of the plaintiffs' bundle of documents ("PB") and said that these showed how the shop looked when he visited it.

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PW2 Jasbir Singh

a

The second plaintiff, he was the most important single witness.

He described how he took out a fire insurance policy with Commercial Union (“C.U.”), valid for the year 1988/89. He renewed this for 1989/90, paying a premium of B\$5000.25.

Mr Sin, of Jasra Harrison, told him that the premium would be tripled for 1990. This he could not afford, so he got in touch with Mr Richard Chin (“Chin”) of RH Lau. Chin came to see him in his office in April 1990. He showed Chin his C.U. policy, which Chin read.

b

He told Chin that he wanted the same cover as before. Chin assured him that the phrase “textile goods” meant all goods in the shop. C.U. was willing to renew his policy, but at a greatly enhanced premium.

He told Chin that he had no other policy on the same stock. He showed him the stock on the ground floor, which Chin saw was composed of textile and other goods.

c

The goods for SE were stored in the two rooms at the front over the walkway. He showed them to Chin and explained to him what they were. Chin visited the shop several times and went upstairs twice.

The insurance on the stock for SE lasted till 16 August 1990. He reduced the sum insured so that he would only have to pay a smaller premium.

d

He enclosed, with his letter of claim of 27 April 1991, the lists of details found at pages 16-27A PB., as Mr Chong, of Graham Miller (GM) the loss adjusters employed by the defendant, had asked him to produce some lists. He tried to comply, although his documents had all been burnt in the fire.

e

The claims were prepared by Singh and his wife and three workers, who sat in his house for a week or so and tried to remember them.

On 6 July 1991, he wrote to GM sending details of bank statements, the lists of damaged or destroyed items, a sketch plan, the business registration certificate and relevant bills.

He wrote to GM on 7 September 1991, enquiring about the payment of Ameer’s claim. He renewed his request on 14 October 1991, six months after the fire. He was told by GM on 11 October 1991 that his claims were still being enquired into. He has received no further letter from GM.

f

He wrote to the defendant on 7 January 1992, almost 9 months since the fire, asking what had happened to the claim. There was no answer to this letter.

g

Singh was in Labuan at the time of fire, returning to Brunei the next day, as the result of a call from his sister-in-law.

The amount of stock claimed by him as destroyed in the fire is far less than the total supplied in the previous year or so by some of his suppliers, according to the invoices, copies of which were later handed to the insurance company.

h

To take an example, the invoices to be found at pages 91 to 137 PB show that 10440 shirts and T-shirts were supplied to the plaintiffs in the year before the fire. The total claimed by the plaintiffs is said, in paragraph 5(a)(II) of the Reamended Defence, to have been 5447.

He bought his stocks from local and Singapore suppliers. He paid cash, or gave cheques or paid by telegraphic transfer.

i

He did not put the cash he got from sales into the bank, so his bank statements would not

a reflect what he received. When he bought goods for cash, he sometimes got a receipt and sometimes did not.

He had a shop in Labuan until the start of 1980, called Champion House. It sold sports goods, shoes and track suits. He brought the stock from Labuan to KB "trip by trip". It was valued at B\$150,000 to B\$160,000. He kept a record of what he brought back but it has been burnt.

b He was sure that he still had in his shop at the time of the fire what he had claimed. If he had the amounts claimed by the defence, his shop would have been only 10% full on the ground floor.

When he left for Miri on 15 April 1991 the shop was full. It had extra goods for the Hari Raya holiday. The stock varied in value from about B\$600,000 to B\$1 million during the year.

c The amounts put in the claim are not based on invoices, but on the memory of himself, his wife and the workers.

SE had its stock on the upper floor of the same building. It did wholesale business only.

d The invoices which he got are mainly covered by the questionnaire sent out by G.M. to his suppliers.

He did not remove any of the goods from the store before the fire and did not set fire to the premises.

In cross-examination, Singh insisted that the two businesses, Ameer and SE, were kept separate, with different bank accounts and stock.

e SE did supply to Ameer. If it did so, it issued an invoice. On average, SE supplied Ameer with up to B\$7,000 to B\$8,000 worth of goods a month.

Ameer was a retailer and had up to B\$1m stock. SE was a wholesaler with stock worth about B\$170,000. This is not an unusual proportion.

Singh bought from four local suppliers. He was the managing partner of Ameer and of SE

f He told Lau's agent that part of the first floor was occupied by SE and that the proposal form was for Ameer only.

He told the agent that he wanted to cover everything in the shop, not just textiles. The agent said that a reference to "textile goods" would cover everything.

g Chin had seen the goods in the shop and knew they included all goods and not just textiles. There was, as he said in the proposal form, no other insurance on the same property as that to be covered by the new policy. He was satisfied with the answers in the proposal form.

Ameer had a bank account in 1990 with OUB. This he closed and opened one at the Hongkong Bank. He did not give the OUB accounts to Mr Chong.

h He thought that he had opened an account at Hongkong Bank about December 1990. He had the originals of the account at the Hongkong bank for January-March 1991 in his briefcase at the time of the fire.

He gave G.M. what he had.

i The two days before Hari Raya would be very busy but he spoke to his wife and workers and was happy to leave the shop in their charge.

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It is correct to say that he did mean to go on to KL after seeing his brother in Labuan. **a**

He looked at the statement which was taken from him by Mr Chong on 20 April 1991. It appears at pages 127 to 133 DB. With one or two minor changes what is set out therein is correct.

He had no cash flow problems though he was not sure from day to day how much was in his bank. He did not keep a profit and loss account of Ameer, but he made about B\$80,000 a year from Ameer each year after 1975. **b**

He got in a lot of extra things for Hari Raya as there is a demand for them then. He still owed his landlady 11½ months rent, reduced to 8½ after his deposit was taken. He assigned to her B\$44,200 of any sum he was awarded against the defendant.

His monthly sales were about B\$50,000 to B\$60,000. The gross profit was about B\$15,000 a month and the net profit B\$7,000 to B\$8,000. **c**

He agreed that, in addition to his landlord, he owed B\$309,000 to the 13 suppliers who replied to GM.

According to his invoices, he bought about B\$100,000 worth of goods a month in 1991, much more than his average monthly sale. He agreed he owed suppliers a lot of money. **d**

He did not tell Mr Chong about the goods from Labuan, as Chong only asked him for a list of other suppliers.

The claims he put in were a matter of guesswork, as he did not keep a record of the stock. But he could, for example, recall exactly how many shoes were in stock.

He told the workers what his unit price was, which was the cost to him, as they needed to know this for bargaining. He could remember what was on the premises, though he had no stock cards. **e**

The lists are an estimate based on memory. He did not tell the insurers, or anyone else, that it was only an estimate. He told the defendant that it was the actual amount of goods lost.

There is a notice on the staircase saying "Singh's Enterprises". Only those who bought from him would know which goods belonged to which business. SE's goods were kept in a locked room about 120 square feet in size. **f**

He claimed B\$174,000 worth of SE's goods under the fire policy from C.U.

He can't now say what was stored on the ground floor and what was on the first floor.

The photos show that the shop was packed with goods about 6/7 months before the fire. He did not tell the loss adjusters about these photos. He did not know what they wanted. They did not ask him if he had any. **g**

He could not give the quantity of goods in Items 1 to 4 on page 18 PB or of toys and bags on page 26 PB.

Chin and another man came to his shop. He did not tell him he wanted to insure only textiles, but all the stock in the storehouse, exactly as in his previous policy with C.U. **h**

He showed his C.U. policy to Chin while the latter was inspecting the goods in the shop and in his office.

He told Chin that he had another policy and that the front of the upper floor contained SE's goods. **i**

- a** There was a sign saying "Singh's Enterprises" on the staircase. This was the only one. He wanted a new policy because C.U. wished to raise the premium from B\$5,000 to B\$15,000. He stayed with C.U. for SE, as they gave him a discount and he reduced the cover.
- He paid B\$4,860 for the insurance on Ameer, by instalments, not the B\$8,000 charged.
- b** In re-examination, Singh tried to justify the items at pages 18 and 26 where there were no quantities given.
- For made up garments, he guessed 6,000 to 7,000 meters at B\$7-20 a metre.
- For US curtains, 170-180 rolls of 50 metres at B\$7-10 a metre.
- For Korean curtains, 200 or 20 rolls at 50 metres at price of B\$7-18 a metre.
- c** For Japanese curtains 103 rolls at 50 metres for price B\$9-15.
- Toys. An estimate only.
- Bags. 200-300 at B\$35-B\$60 each.
- In March 1990, he had two policies, one for Ameer and one for SE.
- d** He gave Mr Chong the statutory declaration a day or two after it was sworn and all bills and invoices. He told Mr Chong that was all he had and Mr Chong said "Don't worry. We can process your claim".
- He did not tell the insurers about the goods from Labuan as they had not been supplied to him, and he owned them.
- e** He bought a lot of goods with cash because it was cheaper that way. He told the workers the unit prices, so they could bargain with customers.
- He estimates 70-80% of the floor space in the shop was covered with goods for sale.
- An ordinary customer would go into the store. He would not normally be taken upstairs. This would be for small traders who were buying wholesale.
- f** *PW3 Mrs Jasbir Singh*
- She is the wife of Singh and has worked in Ameer Agency since it was found.
- She was in the shop on 16 April 1991. There were more goods than usual in the shop that day.
- No workers stayed in the shop after she locked it about 2030 that day and went home.
- g** Ameer stored its goods on the top floor.
- She thought takings that day were about B\$5000. The Borneo Bulletin is correct in reporting that she said Ameer had lost about B\$500,000 in goods in the fire.
- She helped her husband and the workers to prepare the list. She had not done anything like this before. She told the others what she remembered of the kind of goods they had in the shop.
- h**
- The unit prices in the claim are cost prices.
- Sometimes the door to SE's rooms was locked and sometimes closed.
- We had all the business fixtures listed at page 5 of the pleadings at the time of the fire.
- i** In cross-examination, she said that her husband fixed the prices. The normal daily takings

were B\$1000 to B\$2500 a day.

a

Her husband dealt with all the Singh's invoices, though she had seen some.

Her husband fixed the selling price. He also told her the cost price, so that she could give a discount without losing money.

DW1 Dr Eric Mullen

Dr Mullen, by his training and experience, has dealt with many fires, up to 300 - 400 in all and has given evidence in about 20 cases in the UK.

b

He has joined the Singapore firm of JH Burgoyne.

He was asked by G.M. to investigate the cause of the fire at Jalan Pretty on 20 April 1991. He flew to BD the next day and examined the site.

c

He spoke to Singh, who said he was away when the fire took place, though his workers were there shortly before.

He asked Singh where the stock was kept. Singh said there was a lot of it, kept all over the place.

From his physical examination, he concluded that the fire was not due to smoking or a mechanical fault, though he could not exclude this.

d

It seemed likely that the fire was started deliberately but he could not be sure of this.

He was asked by GM to return and try to assess the amount of stock on the premises on 1 May 1991. He was given a list of the items claimed.

The site, when he returned on 3 May 1991, did not seem changed from when he saw it on 21 April 1991.

e

He asked Singh where the stock was and got only vague answers.

He divided the premises into 32 sections and cleared one area a time, listing what was in it. He put, in Table I, 22 groups of property, which matched what was in the claim.

Table II shows the quantity of items found present at the scene in each group. One category of items was counted. The second category was based on a count of the parts, multiplied up.

f

He added 10-20% to each category, in case he made a mistake in counting.

In his figures in Table III, he made some adjustments over Table II. The right hand column in Table III shows what was claimed by the assured.

g

At p.118 DB is a list of goods claimed to belong to SE. These added to the amount for Ameer, 84 carpets, 440 trainers, 300 football boots, 1716 shirts, 5097 readymade garments and 268 track suits.

In his estimates of stock, he took into account (a) how well the item would burn (b) the quantity of material there (c) the bulk of the material.

h

Table III is derived from Table II and adds on various percentages to the items found, in case he missed anything.

He could not tell if the goods came from the upper or lower floor but could say that there was a negligible amount on the upper floor.

i

- a* The floor joists from the upper floor were lying on top of the debris. If there had been a lot of goods on the top floor, they would have been on top of the joists. But there was nothing.
- Figure 2 shows what he found on the ground floor. On the walkway they found charred wood, plaster and paper on the walkway. Most of the debris in front of the shop was from the ground floor.
- b* There was some stock on the upper floor but not a lot.
- At (8) and (27) he found jumbles of various items.
- He found no socks. He would have expected to do so if they had been stored in boxes.
- The photos at PB p. 242-248 are broadly consistent with what he found.
- c* The debris he found bore no relationship to what was claimed, which was for more than he found.
- He made allowances for each item - i.e. he assumed more to be there than he counted or estimated.
- d* The method he adopted was standard. He was confident that his estimates were generous and as reliable as such estimates can be.
- GM asked him as to the cause of the fire. He met Singh in Kuala Belait and asked him various questions. He probably met Singh on the evening of 21 April 1991, when he was with the adjusters.
- e* The front of No. 33 seemed closed but at the back the door was secured by a padlock which had been cut.
- The upper floor at No. 33 had collapsed except the kitchen at the back. He got a list of claims from GM but can't recall when he got the sketches of the premises.
- He began to dig at the back of the shop. He shovelled off the top layer and examined it.
- f* Then he examined the other layers and estimated what had been there. It took him about five hours to go through the store.
- Ash was not analysed. There is no need for analysis of ash if you know what composes it.
- There was little change between 17 April 1991 and when he saw the debris. Items on top of debris could be disturbed or even taken away. Some small items might have been taken between the fire and 21 April 1992.
- g* At the end of fire you have a layer of ash. Sometimes the water played on a fire can disturb the ash.
- A cigarette end left burning by a customer would start a fire if left for a short time. The delay between 2¼ and 3/5 would only cause a difference due to items being taken from the top of the debris.
- h* His findings were consistent with the fire having started at No. 33. The debris was up to 4 feet deep.
- The photos of P. 242/248 PB are quite consistent with what he found at the site.
- The materials in these photos are assorted. It depends on how they were stacked as to how fast they burned.
- i*

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If things were burnt away completely, he could give no more than an educated guess. It was not exact. There were three factors to take into account, the severity of fire, what kind of materials were burned and how compact the items were.

a

Table II shows what he found. He counted the carpets and rolls.

At the site he rounded up the numbers in case he miscounted. At a later stage he added further. He spent on the average about 10 minutes on each section.

b

A claimant has difficulty in coming up with a list in a short time after a fire.

This claim includes far more than what was found as a result of his examination of the debris.

DW2 Chan Hwee Seng

He is the managing director of Graham Miller, the loss adjusters, of Singapore. He has dealt with over 1000 fires in South East Asia.

c

GM advises if the claim is payable and if so how much should be paid. On 17 April 1991 GM had instructions from the defendant insurers to investigate the fire at KB on 16 April 1991.

Mr Chong, their rep. in BSB, investigated the fire and reported suspicious circumstances. So he recommended that Dr Mullen be sent to BD to investigate. GM were suspicious of the nature of the fire and the size of loss.

d

He thought the claim was very high, for a shophouse. None of the other shophouses claimed as much as a million.

On 3 May 1991 he went to KB with Dr Mullen. Singh gave them a statement of his claims, some HSB invoices for January/March 1991, and some SCB accounts for 1987/8/9.

e

Bank statements help us to check against goods purchased. They are of less value if everything is done by cash. He got no other bank statements from Singh. Singh did not say that Ameer had an OUB account.

We did not have enough information to advise the defendant to pay.

f

The Hongkong Bank statements show payments in and out of about B\$20,000 a month. These sums bore no relationship to the level of stocks. The pattern of bank statements is not commensurate with the amount claimed.

In January 1991, Ameer's invoice show B\$127,767 purchases. Withdrawal from the bank of B\$24,867 does not match.

g

Invoices were supplied by Singh in June when he made his statutory declaration.

Deposits in the bank should tally with the turnover. If part of business is in cash, the deposit figures will be lower than the turnover.

If your turnover is B\$55,000 a month, you are buying more than you can sell if you purchase B\$127,000 in a month.

h

He did not call any of the suppliers. He should have called them to ask if any of the invoices were correct.

Invoices for 1990 amounted to B\$490,000. They were B\$367,000 for first 3 months of 1991, i.e. 75% of 1990 figure in one quarter.

i

- a** Total of B\$367,000 purchases does not tally with sales of about B\$165,000 in the same period.
- The plaintiff says he bought an average of B\$55,700 a month of goods for cash in January, February and March, 1991. His invoices show he bought B\$383,000 in 1991 up to 8 April which is about B\$117,000 a month.
- b** The debt of the plaintiff, according to the suppliers, was about B\$386,781 when the fire took place. This is a large sum for a business with a turnover of B\$55,000 a month.
- He was not able to assess the value of the goods claimed from the information and documents which Singh gave him.
- c** Singh did not reply to our letter of 31 May 1991. It was up to the insured to provide the information we needed. He thought the claim was exaggerated and was fraudulent.
- GM's final report was not made until February 1992.
- Table (D2) sets out the items which Dr Mullen estimated had been on the site. For unit cost, he averaged the amounts in Singh's claim. His unit prices are not unreasonable.
- d** The estimates I have given could have been produced by June 1992.
- In cross-examination, he said that he did not have enough information from Singh to process the claim.
- He agreed that, with hindsight, he might have asked Singh for the extra information that he sought about SE.
- e** He made a verbal report to his principals about February 1992 and a written report some ¾ months later. Liability was not denied until the defendant's solicitors' letter received on 1 April 1992, fifteen days before the limitation period expired.
- If he knew that most of Singh's purchases were in cash, the bank accounts would be of less value. He did not ask Mr. Singh if he did most of his business in cash.
- f** GM have never received any IBB statements for Sept.-Dec. 1990 and for Jan-Apr. 1991 for SE.
- The facts were presented to the principals, but no recommendation was made as to whether they should pay or not.
- g** There were two dishonoured cheques in the bank accounts of Ameer for March 1991. This may show that Singh had no overdraft facilities and that he was operating near to the margin, as the cheques were small.
- G.M. did not write to him after 11 October 1991, though Mr Chong remained in touch with him.
- DW3 Sheery Shoot*
- h** She was a customer who visited Ameer's shop some time in February 1991.
- She did not see a lot of stock in the shop. It was much less than in the pictures at pages 242 to 248 of the PB.
- i** She did not know Mr and Mrs Singh before. She has only been once to Ameer, for about five minutes. She did not buy anything in the shop. She did not go upstairs. She saw jeans, T-shirts, shorts, sportswear and tracksuits, but is not sure if there were shoes or bags.
- Her evidence was of no assistance to me.

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DW4 Richard Chin

a

He is the managing director of HC Lau and Sons, who are insurance agents.

HC Lau are the agents for the defendant and other insurance companies.

Singh came to see him and said he wanted to take out a fire insurance policy on textile goods.

b

He visited No. 33 Jalan Pretty with his manager about April 1990. There were only textile goods and carpets in the shop.

He went to the first floor and saw what was there. Singh wanted him to insure what was in the store.

The policy was for B\$500,000 textile goods and B\$40,000 in business fixtures and fittings.

c

Singh said there was no other policy on the property. He did not say there was another policy for Singh Enterprises.

Singh did not show him any other policy for the ground floor or the upper floor.

In cross-examination he said that where a person wishes to insure, he asks him how much and where. He then asks him to fill in a form.

d

He went to the shop and looked. If he thought there was an over valuation, he would refer the matter to the insurance company.

When he went to Ameer's office and chatted with Singh and Tony Leong about the policy. He walked around the shop and saw textiles and carpets. He saw textiles, carpets, belts.

He went upstairs and stayed on upper floor for a few seconds. He can't remember what he saw, though there were lots of boxes there near the back stairs on the upper floor. He did not go to see what else was there. He could not remember if Singh told him that the goods in the front rooms upstairs belong to SE.

e

He asked Singh for a copy of his old policy. Singh replied that he did not have it. He asked Singh who the previous policy was with. Singh told him but he can't remember who it was.

f

He thinks the goods he saw were worth half a million dollars. He thought he was insuring only textiles and carpets, which were worth half a million dollars.

He never asked Singh why he wanted to change his insurance company, or ask him what premium he had paid.

He did not tell Singh that "textiles" covered everything in the shop. He can't remember if he told Singh he need not give any more details as "textiles" would cover everything.

g

He thought Singh wanted to insure only textiles and carpets.

He did not know that SE was covered by another insurance company, Singh did not tell him he had another business.

h

He can't remember if he saw any non-textile goods on the premises or if Singh told him there were non-textile goods on his former policy.

DW5 Tony Leong

He is a manager at HC Lau. He went to Singh's shop in April 1990. Chin asked the questions and he filled in the form.

i

Singh said he wanted to cover textile goods and fixtures and fittings.

a Singh said there was no other insurance on the property. We did not want a double cover. He did not know that Singh had another business on the first floor as he did not tell them. He did not think that business fixtures covered furniture.

He thought ½ million was an over valuation of the stock then in the store, though other stock might have come in later. What he saw there may have been worth B\$300,000.

b He thought “property” in the proposal form meant textiles, not the buildings.

DW6 Billings Ted

He is the insurance manager of South East Asia Ltd., the defendant company, which was founded in 1954. It accepts general insurance, including fire insurance.

c The company insured the textiles, furniture and fittings of No. 33 Jalan Pretty, KB, for a sum of B\$500,000 plus B\$40,000, from 30 April 1990 to 30 April 1991.

The amount of Singh’s claim, of over a million, was too high. The company would have paid if the claim had been reasonable.

He believed that his company thought that the claim was dishonest, because it was so high.

d He was not told by HC Lau that there was another policy in force on the premises.

The first denial of liability by the company was the letter sent by its solicitors on 25 March 1992, nearly a year after the fire.

He never asked Singh to send any documents to the company. He left it to GM to ask for any they needed. He thought the insurers would have settled if the claim had not been so high.

e GM recommended to him that the company should not pay, about February 1992. He did not remember when the company decided it would have paid a smaller claim.

The averaging clause 17 in the policy is not applied by the company, even if the amount insured is less than that which is claimed.

f Singh came to see him to ask him how his claim was progressing. He told Singh that his claim was still not finalized.

We never offered to pay Singh for what Dr Mullen said was there or made any offer to him at all.

If Singh had put a claim for B\$500,000 in April 1991, the insurers would have considered payment.

g Singh was not told that his claim was not accepted by the company, until more than eleven months after he submitted it.

Jasbir Singh

Much depends upon the credibility and reliability of Mr Jasbir Singh, the claimant.

h Singh was a difficult witness. He seemed to find it hard to answer a direct and apparently simple question in a straight forward way. If not restrained, and this itself was difficult, he offered a rambling explanation, often lapsing into apparent incoherence.

I ascribe part of this to his difficulty in expressing himself adequately in English, though he refused a Malay interpreter. Allowance should also be made for the natural nervousness of a witness appearing in Court for the first time.

i

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I do not think that Singh did himself justice. He was often exasperating and seldom kept to the point. Perhaps he is not a clever man, save perhaps in business, and he has a number of fixed ideas.

a

One of these, I suspect, is a feeling that he has not been treated with proper consideration by the insurance company. Although he has brought this upon himself by his own forgetfulness and by his failure to realize what is considered to be important by others, I do not think that he should be disbelieved as a whole. This does not mean that I accept all his evidence.

b

I do not accept the suggestion (which he denied) that he claimed for goods which he knew had never been on the premises, or that he arranged for the fire to take place at No. 33 Jalan Pretty. As he was in Labuan on the night of the fire, he can be acquitted of any charge of having started it himself.

c

While I find Singh to be generally credible, I bear in mind, when assessing his evidence, that he is prone to exaggerate and that this applied especially to the claims which he submitted to the defendant.

Was the claim exaggerated?

The claims put forward by Singh are remarkably comprehensive for a fire victim who has no records, as these were consumed in the fire. He thus had to rely, and this I accept, upon his memory of what was in the Ameer Agency store at the time of the fire.

d

According to his evidence, he and his wife and three of the workers who helped in the shop tried, over a period of several days, to remember what stock had been maintained in the store.

e

With only their recollection to rely on, it is not surprising that the claims were inaccurate. It would have been understandable if, as each of the five persons contributed what he remembered, many items were included even though the memory of them was unreliable and often duplicated by others.

The claims put forward by Singh for stock amounted to nearly a million dollars. His own figure is that his turnover averaged about B\$55,000 a month. If his claim is correct, this would mean that he held in stock, at the time of the fire, enough to cover his needs for over 15 months. This is difficult to accept.

f

Singh stated that he was not in financial difficulty at the time of the fire. This does not seem to be a fair assessment of his position. He owed about B\$386,781 to the fourteen suppliers, who replied to G.M.'s circular letter of 5 July 1991, and to the landlord for the rent of No. 33 Jalan Pretty.

g

The names and addresses of these suppliers were provided by Singh. I have no reason to suppose that their figures are inaccurate.

An analysis of the questionnaires completed by those 13 suppliers, whose replies were made available to the plaintiff, shows that the value of goods supplied by them to Ameer was about B\$375,000 in 1990 and B\$405,000 or so in the first four months of 1991.

h

This does not take into account purchases made by Singh in cash, nor the substantial stock which he brought from Labuan during 1990. The latter he valued at B\$150,000 to B\$160,000.

The stock, he said, varied in value from B\$600,000 to B\$1 million during the year. When he left the shop and went to Miri on 15 April 1991, it contained extra goods for Hari Raya.

i

a According to Chan, the managing director of GM, the loss adjusters, the invoices later produced by Singh showed that he had purchased B\$490,000 worth of goods in 1990, and about B\$367,000 worth in the first quarter of 1991. To the B\$490,000 has to be added the value of the Labuan stock, giving a total of about B\$650,000 for 1990.

b There may have been a substantial amount of purchases for cash in 1990, though Singh could give no figure for this. No books of account, stock records or receipts were available. This may not be a good way to run a business, but it appears to be common and not to lead to disaster in all cases.

c However that may be, there were heavy purchases in the first quarter of 1991, according to the suppliers. While they seem to be larger than Singh can have needed to sustain his level of trading, they suggest a substantial amount of goods was in stock than usual at the time of fire, subject to the findings of Dr Mullen.

Taking these factors into account, and giving weight to the evidence of Dr Mullen, I have no doubt that the claim submitted by Singh was exaggerated.

This however, will not relieve the company or liability unless the claim can be shown to be fraudulent.

d *The evidence of Dr Mullen*

Dr Mullen was called by the company, as an expert in the investigation of fire claims.

He examined the scene of the fire which consumed the premises at No. 33 Jalan Pretty on the evening of 16 April 1993. He made two visits, a short one on 21 April 1992 and another of about five hours on 3 May 1993.

e On the latter occasion he examined No. 33 with care, describing how he divided the area into 32 sections. Before he did so he was provided with a list of the items which had been claimed by Singh.

He had formed the view, in his first visit, that the fire had been started deliberately though he could not be sure of this. This belief, as the plaintiffs suggest, may have influenced his opinion of what was in the shop at the time of the fire.

f While he could not be sure if the goods he found came from the ground or upper floor, he could say that the amount on the upper floor was negligible.

He was satisfied that what he found was much less than what was claimed. He made allowances for each item which he counted or estimated, so that the final total he submitted was in excess of this.

g Dr Mullen described the methods which he adopted for examining the debris, which he found on the ground floor of No. 33. He thought there would have been little change between 17 April 1991, after the fire, and when he examined the debris on 3 May 1993, though small items might have been taken away and the layer of ash on the surface may have been disturbed by the water played on the fire.

h The photos produced by Singh, showing the shop some months before the fire, were consistent with what he found.

He said that he had given an estimate, though if things were burned away completely, he could give no more than an educated guess. It was necessary to take account of the severity of the fire, the nature of the materials involved and how compact the items were.

i

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He rounded up the items found at the site in case he had miscounted, and added more at a later stage. He was satisfied that the claim had included more than he found as a result of his examination of the debris.

a

Dr Mullen, from his CV, is an expert in the investigation of the origins and effect of fires. I must either accept what he says, in general, or reject his evidence as unreliable and unworthy of belief. There are no grounds on which I could properly reject his testimony as a whole though there are aspects of it which cause me concern.

b

Dr Mullen did not examine the debris with care until 17 days after the fire. He appears to have discounted the fact that, because it was a severe fire, hoses had been used on No. 33. In the interval, there had been rain and probably scavengers. The examination of the debris took place in the absence of Singh. It took about 5 hours in all, or about 10 minutes for each section of debris, which seems a short time for this. He sent no ash for analysis.

c

These factors make it difficult to accept his evidence as to the quantity of goods which was present at No. 33, when the fire took place, without reservations.

Dr Mullen agreed that, although he had not been able to detect them, other goods, some of a textile and some of a non-textile nature, may have been present at the time of the fire. He has attempted to put a valuation on his estimates, in the Tables which he submitted. He has also stated, in those tables, that in certain cases he was unable to find traces of stock though he concedes that these items may have been present.

d

Dr Mullen set out the items which he found or estimated, or which he conceded might have been consumed by the fire. Chan, the Managing Director of GM, derived the unit prices, which we thought were "not unreasonable", which is presumably insurance language for very fair, from those submitted in Singh's claim.

e

The list of the items and prices produced by Dr Mullen and Chan were as follows -

Textile Goods

Type	Quantity Claimed	Unit "Cost"	Quantity Found	Amount
Rolls of fabric	925	B\$234.30	50	B\$11,715
Shirts and T-shirts	5447	16.20	350	5,670
Jeans	3601	17.20	700	12,040
Textiles	2019	15.00	800	12,000
Ready made goods	20,266	8.80	1000	8,800
Track suits	1966	22.70	300	6,810
Trousers	1810	16.00	200	3,200
Socks	534	4.00	-	2,136
				B\$62,371

f

g

Non-Textile Goods

Type	Quantity Claimed	Unit "Cost"	Quantity Found	Amount
Carpets/rugs	315	B\$113.00	16	B\$1,808
Shoes/trainers (pairs)	3989	34.50	100	3,450
Football boots (pairs)	900	33.40	15	501
Balls (small) (pairs)	552	9.30	180	1,674
Nets	139	22.60	20	452

h

i

a	Belts	1176	6.00	12	72
	Balls (large)	271	19.09	-	5,149
	Guards	1089	9.70	-	1,056
	Rockets	262	61.80	120	7,416
	Bats	126	24.60	80	1,968
	Bags	125	15.40	-	1,925
b	Toys	-	-	-	7,000
	Cosmetics	-	-	-	3,500
	Assorted sports goods	1434	7.30	-	10,468
					B\$46,439

c The above totals include the amount claimed for toys and cosmetics. Dr Mullen found no toys, and only a few cosmetics. I have assumed that what was claimed for was present and was consumed by the fire.

Accepting Dr Mullen's figures as correct, and including both textiles and non-textiles for this purpose, the value of the goods which he counted, estimated, or conceded might have been present, amounted to about B\$107,000.

d Nothing is said in Dr Mullen's report about the fixtures and fittings, though he seems to have included them in his totals, as he found no evidence of them.

I must assume that, although some of the items listed by him could not qualify as "business fixtures and fittings" e.g. "the TV and radio sets", other items do fall within that definition.

e In the absence of any guidance, I can only estimate that half the claim for business fixtures and fittings is a valid one and add a further B\$20,000. This allows for depreciation since Singh spent B\$40,000 on them in 1988.

If Dr Mullen's report is accepted, plus an award for fixtures and fittings, I reach a figure of about B\$127,000, as the amount due to Singh (assuming that his policy remains valid).

f I have, as I have indicated above, some reservations as to the accuracy of the estimates given by Dr Mullen. Unless substantial stock was removed from the premises by Singh, and there is no evidence to support such a possibility, nor was it suggested to him in cross-examination, there is likely to have been present on the premises a considerably larger stock than that estimated by Dr Mullen.

g His report, as he himself agreed, could not be more than an educated guess. I have no alternative figures, apart from the claims of Singh, which are exaggerated, the amount insured, which seems to be too high, and the amount estimated by Dr Mullen, which seems far too low, bearing in mind the various unsatisfactory features which I have mentioned.

h I cannot do more than Dr Mullen and guess that, because I have doubts about his estimates, he may have underestimated the stock which was present by as much as 100%, so that the value of the goods present may have amounted to B\$214,000 plus B\$20,000, a total of B\$234,000.

Was the claim fraudulent?

I have found that Singh's claim was exaggerated. Can it be said that it was inflated by him partly as a result of the unreliability of a communal memory, or was it so far from the truth as to amount to a fraudulent claim.

i

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I accept, following *Tai Lee Finance v. Official Assignee and Others* [1983] 1 MLJ 81, that the burden of proof of fraud, in Brunei as in Malaysia, is proof beyond reasonable doubt, that is to say the criminal burden will apply. It will lie on the defendant to show beyond a reasonable doubt that the claim was fraudulent. In Singapore, the civil burden is deemed sufficient, but I do not adopt this.

a

Although the value of the goods (at cost price) was assessed by Singh as nearly a million dollars, the maximum amount which he could claim under his policy was half a million.

b

In dealing with inflated claims, it is necessary to bear in mind that the assured may honestly over estimate his loss and that sometimes this may be due to mistake.

An exaggerated claim will be considered fraudulent only if it is clear that the assured intended to defraud the insurers or that the over-estimate of loss is so serious as to lead to the inference that the assured must have intended to defraud them.

c

The amount which I have estimated as present, is rather more than two fifths of the insured maximum of B\$500,000, or nearly one fifth of the sum at which Singh valued his lost stock.

I have to decide whether the claim is so exaggerated as to be fraudulent.

In reaching my conclusion I bear in mind that no stock cards, or accounts were kept of the business and that such records as did exist were burned in the fire.

d

I allow for the fact that Singh, in the absence of records, was obliged to rely on the recollections of himself, his wife and his helpers. No doubt some of his figures must have been based on their memories of what they thought they had seen in the shop.

Furthermore, I take into account the fact that some of his purchases were made for cash, and that the absence of records for them made it more difficult to estimate what had been lost.

e

The claims are very detailed, listing all sorts of odd numbers of items as being in stock, the sort of detail which is usually derived only from a study of careful records.

There is no doubt that these claims were exaggerated. But I do not find that Singh must have known that they were false and that they were submitted for the purpose of defrauding the insurers.

f

He was unwise and misguided in putting in a claim which far exceeded the maximum payable under his policy. I have come to the conclusion that he was stupid, rather than fraudulent, and that the insurers have not discharged the burden of showing that he was fraudulent.

It is to be expected that a claim will be exaggerated to some degree. Insurance companies are familiar with this. It would be unreasonable to expect accuracy from an insured, especially one whose records have been destroyed in a fire.

g

The claims were, as Singh admitted in evidence, no more than estimates. Singh undoubtedly suffered a severe loss, even though I find that it was much less than the amount which he claimed.

h

Documents (Condition 11)

Having reached the conclusion that the claims were not so exaggerated as to be fraudulent, I have to reach a finding on the other aspects of the defence put forward by the insurers.

It was argued that Singh was in breach of Condition 11 of the contract of insurance, by reason of his failure to supply to the insurers all such particulars etc. as "may reasonably be required by or on behalf of the Company".

i

- a** Within a few days of the fire, Singh handed over his list of claims and the names and addresses of some of his suppliers.

He did not answer the letters which he received from GM on 14 May 1991 and 31 May 1991 until 6 July 1991 when he listed the documents which he had produced to them.

- b** He had already provided a statutory declaration, dated 20 June 1991. In this he listed various invoices for 1990 and 1991, which he had received from the suppliers of the goods mentioned in them. The originals were, he said in the declaration, destroyed in the fire.

He did not supply GM with Ameer's bank accounts for December 1990 and April 1990. It is difficult to see, from a study of the accounts for the period January to March 1991, that the missing accounts would have been of any help to the insurers.

- c** I accept Singh's evidence that he handed the statutory declaration to Mr Chong two or three days after it was sworn, and that Chong then said to him that he need not bother with any more documents, as the insurers had been provided sufficient material to process his claim.

It is not surprising that, after such an assurance, which I accept was given, in the absence of any evidence by Mr Chong, Singh should have believed that he need not provide any more documents to G.M. or to the insurers.

- d** In the event, after 20 June 1991, there was no further request for documents from Singh. The insurers seem to have been in possession, by about the middle of 1991, of sufficient material to decide whether the claim was a valid one. Within two or three days of the handing over of this list, Mr Chong told Singh that he had furnished all that was necessary for his claim to be processed.

- e** Singh had supplied the majority of the documents sought by the insurers. Their failure to press him for any other, combined with Mr. Chong's assurance, must be taken as implying that they were content to make a decision with the documents they had, and that they did not require any more.

- f** I find that Singh had complied substantially with his duty to furnish such documents as the insurers could reasonably require of him, bearing in mind the circumstances of the fire.

Non-disclosure

It was submitted that the policy on No. 33 Jalan Pretty was voidable, because there was an important failure by the defendant to observe the rule which describes a contract of insurance as one requiring the utmost good faith, or *uberrimae fides*. This requirement of the utmost good faith applies to both parties and to all classes of insurance.

- g** The effect of non-disclosure is that, when the party aggrieved hears of it, the contract becomes voidable, so that he can proceed with it or not, at his election.

Not every non-disclosure will give the insurers such rights. They must prove that the fact not disclosed was material, that it was within the knowledge of the assured and that it was not communicated to them. This rule does not apply to a proposal form, in which any misrepresentation will render a policy based upon it voidable, whether it is material or not - see *Dawson's Ltd v Bonnin & Others* [1922] 2 AC 413 (HL).

- h**

The insurers complain that the assured never informed them, or their agent, that part of the goods on the upper floor was owned by SE and separately insured. No witness has testified that this was material, or that a responsible insurance agent would have so regarded it.

- i**

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Singh testified that he told HC Lau's agent, Chin, that he had another policy and that the front of the upper floor was occupied by SE goods. He says that he told Chin this in his office before he showed him upstairs.

a

Chin, the managing director of HC Lau, the insurance agents, called to see Singh at the latter's request in April 1990. Chin does not remember if Singh told him that he had another policy for SE goods.

b

Leong, Chin's manager, says that he joined the discussion, which was already in progress, with Chin and Singh. While he was there, the policy of SE was not mentioned.

I prefer the recollection of Singh. I believe that he did inform Chin that SE had a policy with another insurer for its goods on the upper floor.

In any event, if Chin had been so informed, I cannot believe that it would have made any difference to his willingness to insure Ameer's stock.

c

Chin was primarily interested in issuing a policy on Ameer's goods. I believe that he was told of the existence of SE goods and that he was not interested in them.

Textiles

The policy which was issued by the company provided for the insurance of "stock in trade of textile goods" owned by Ameer Agency of a value of B\$500,000.

d

The previous fire policy of the assured was with Commercial Union. It expired on 1 April 1990, and provided a cover for B\$480,000 on the whole stock of the Ameer Agency shop, including textiles.

Singh's evidence is that he approached Chin and told him that he did not want to pay the premium now demanded by the Commercial Union, which was three times as large as in 1989.

e

Chin, after some hesitation, thought in evidence that he did ask Singh for his former policy but that the latter said that he did not have it with him. It was never produced to him. He does not appear to have thought it important enough to insist upon, or to remind Singh about it.

f

I do not believe Chin's evidence on this matter. I find that Singh did tell him why he wanted to change his policy and that he showed it to him.

Singh insists that he told Chin that he wanted to insure the whole of his stock, just as he had done the year before. When Leong was filling in the proposal form, in accordance with Singh's answers, Leong filled in item 2 of "property to be insured" as "textile goods". He also completed question 4 asking "what goods are stored in the building?" as "textile goods". The form was signed by Singh.

g

A glance at the earlier policy would have shown Chin what was covered in previous years. Nor can I see any point in the restriction of the policy by Singh to textile goods only. There is no evidence that textiles were cheaper than other stock to insure.

Chin says that he looked round the store, as indeed he must have done to get to the office. He would have seen that textile and non-textile goods were jumbled together. He glanced at the upper floor, but only stood at the top of the stairs and made no attempt to examine the stock there.

h

I believe that Singh was told that all his stock would be covered, and not merely the textiles, and that he took out the policy of insurance on this basis.

i

a *Conclusion*

I have found that this claim, although exaggerated, was not “fraudulent” in law. I have therefore awarded to the plaintiffs a sum of B\$234,000. This should carry interest from 16 April 1991 until payment.

b The conduct of the insurers has, unfortunately, not been to their credit. Their defence, originally entered on 4 June 1992, has been amended three times. Even at the outset of the trial, some of the allegations made against the assured were withdrawn.

The fire took place on the evening of 16 April 1991. Dr Mullen examined the site on 21 April 1991 and on 3 May 1991. The plaintiff provided GM with details of his claim on 27 April 1991 and further information on 20 June 1991 and on 6 July 1991.

c Singh wrote to GM on 7 September 1991 and 14 September 1991, enquiring about his claim. He was told by GM on 11 October 1991 that his claim was being looked into. He has received nothing further from GM.

He wrote to the insurers on 7 January 1992, asking what had happened to his claim. He did not receive an answer.

d Only when the solicitors, whom he engaged to pursue his claim, wrote to the insurers on 17 February 1992, was a reply sent on their behalf.

This letter, sent by the insurers’ solicitors, was dated 25 March 1992. For the first time, the liability of the South East Asia Company to Singh under the policy was repudiated.

It was thus 11 months after a fire, in which his stock, whatever it may have been, was destroyed, that the insurers rejected liability.

e This is not an attractive way to behave. The defendant must pay the plaintiffs’ costs of this action, the costs to be taxed if not agreed.

f

g

h

i